

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

April 26, 2002

GSBCA 15808-RELO

In the Matter of JENNY L. W. JONES

Jenny L. W. Jones, Washington, DC, Claimant.

J. F. Drummond, Jr., Attorney, Finance and Operations Law Office, Environmental Protection Agency, Washington, DC, appearing for Environmental Protection Agency.

DANIELS, Board Judge (Chairman).

In January 2001, the Environmental Protection Agency (EPA) offered employment to Jenny L. W. Jones. The EPA official who made this offer told Ms. Jones that if she accepted it, the agency would pay for several kinds of expenses she might incur in moving to the location of her duty station. Among the expenses were househunting costs (for a maximum of ten days) and temporary quarters subsistence expenses (for a maximum of thirty days). Ms. Jones accepted the position and incurred both these varieties of expenses. Employees in EPA's finance office rejected vouchers she submitted for reimbursement of the costs, however. They realized that because Ms. Jones was a new appointee, the agency had no authority to pay for the expenses. 5 U.S.C. § 5723 (2000); 41 CFR 302-1.10(f) (2000); EPA Travel Manual ch. 6.1.a, exhibit 2550B-6-1.

EPA and Ms. Jones understand that the determination of the agency's finance office was correct. The agency has submitted Ms. Jones's claim to the Board, however, with a request that the Board forward the claim to the General Services Administration's (GSA's) Deputy Associate Administrator, Office of Transportation and Personal Property, for favorable consideration under a test program. The test program empowers the Deputy Associate Administrator to grant administrative relief of claims which cannot be paid due to statutory or regulatory restrictions, but ought to be honored for equitable reasons. See 5 U.S.C. § 5739.

In a previous case involving EPA, we established these guidelines for review of a claim submitted to us for favorable treatment under the test program:

We will not apply a hard and fast rule when we determine whether equitable considerations compel us to conclude that a claim is meritorious. In reaching

our decisions, we will consider and balance several factors. At the outset, we recognize that deeming a claim "meritorious" is highly extraordinary, since Government employees are charged with knowledge of all applicable laws and regulations and are expected to comply with them. We will look to see whether the claim presents equitable considerations of an unusual nature which are unlikely to constitute a recurring problem. We will consider whether an agency directed an employee to incur the claimed expenses. We will also consider whether an agency's actions caused an employee to incur the claimed expenses. We may also consider other factors, as warranted by the circumstances presented by individual claims.

Roy Katayama, GSBCA 15605-RELO, 01-2 BCA ¶ 31,542, at 155,714. These guidelines have been followed in subsequent cases. Charles P. Cooluris, GSBCA 15693-RELO (Feb. 11, 2002) (citing other decisions).

Ms. Jones's predicament is much like Mr. Katayama's. Both were newly-appointed to federal service in the EPA. Both had been told by the agency that once they reported for duty, the agency would reimburse subsistence expenses they incurred while occupying temporary quarters. Both stayed in temporary quarters and presented the agency with the bill for doing so. In both cases, reimbursement was denied by EPA finance officers who understood that the law does not permit paying for the costs involved. Applying our guidelines in the Katayama case, we did not recommend that GSA grant administrative relief to the claimant. We considered the case unexceptional in that many travel and relocation claims result from an employee's reliance on erroneous advice from his agency. We also thought it important that the law on the matter was clear and the agency did not direct the employee to occupy the temporary quarters.

Because the Board's decisions are all precedential, D. Gregory Arnold, GSBCA 15692-TRAV (Jan. 18, 2002) (citing Brent A. Myers, GSBCA 15466-RELO, 01-2 BCA ¶ 31,458), we will make a positive recommendation to GSA for administrative relief on Ms. Jones's claim only if we are persuaded that her situation is materially different from Mr. Katayama's. EPA understands this and has made a valiant effort to distinguish this case from the precedent we established in that one. The agency cites six factors as "support[ing] a finding that Ms. Jones's case present[s] equitable considerations of an unusual nature that are unlikely to recur." The six factors are as follows:

1. Ms. Jones's travel orders explicitly authorize reimbursement of househunting and temporary quarters subsistence expenses, whereas Mr. Katayama's did not.
2. Ms. Jones relied on advice from agency officials which was consistent with her orders, whereas Mr. Katayama relied on advice that was inconsistent with his orders.
3. Ms. Jones was not "trying to take advantage of the Government," as shown by her having spent less than her orders allowed and having kept careful records.
4. Ms. Jones was able to start work in a timely manner because of EPA's commitment to pay the costs in question, and this benefited the agency.

5. Ms. Jones signed an agreement to remain with the Government for one year or repay her relocation benefits, and since she has fulfilled her part of this bargain, the Government must be allowed to fulfill its part.

6. EPA is reducing the risk of recurrence of situations like the one faced by Ms. Jones, by developing a test program which, if approved by the GSA Administrator, will allow EPA to reimburse new appointees for the kinds of expenses in question here.

We do not believe that any of these factors sufficiently distinguishes Ms. Jones's situation from Mr. Katayama's as to merit referring this case to GSA for administrative relief. (1, 2) Regardless of what orders or agency advice stated, both employees would have known, had they consulted applicable laws, that they could not receive the promised benefits. (3) Whether Ms. Jones was "trying to take advantage of the Government" does not matter, either. Government employees are presumed to act in good faith, so we consider every claimant to have acted honorably unless clear and convincing proof to the contrary is demonstrated. See Am-Pro Protective Agency, Inc. v. United States, 281 F.3d 1234, 1239 (Fed. Cir. 2002); Clemmons v. West, 206 F.3d 1401, 1403 (Fed. Cir. 2000). (4) Nor do we doubt that EPA's provision of benefits to Ms. Jones had a positive impact on the agency. We are highly reluctant to endorse such a provision of benefits, however, where Congress has disallowed it. (5) Invocation of a contract theory is not helpful, for the relationship between Government agencies and their employees is governed by statutes and regulations, not contracts. Bessie White, GSBCA 15775-RELO (Mar. 28, 2002) (citing Synita Revels, GSBCA 14935-RELO, 00-1 BCA ¶ 30,716 (1999); Louise C. Mâsse, GSBCA 15684-RELO, 02-1 BCA ¶ 31,694 (2001)) (all referencing Chu v. United States, 773 F.2d 1226, 1229 (Fed. Cir. 1985); Shaw v. United States, 640 F.2d 1254, 1260 (Ct. Cl. 1981); and other decisions)). (6) The potential existence of a future program is not sufficient basis for award of benefits to compensate for past mistakes.

Like Mr. Katayama and other claimants whose claims we have not considered "meritorious," Ms. Jones derived benefits from spending the money at issue – she was able to assume a new position which she desired. See Cooluris; Joe J. Puckett, GSBCA 15563-RELO (Aug. 9, 2001); Daniel C. Schofield, GSBCA 15531-RELO, 01-2 BCA ¶ 31,560; David C. McCord, GSBCA 14944-RELO, 99-2 BCA ¶ 30,505. The employees whose claims we have endorsed as "meritorious," on the other hand, were required by their agencies to incur costs from which they derived no benefit, and no law clearly covered their situations. See Noreen Kinnavy, GSBCA 15513-RELO (Jan. 25, 2002); Jacqueline Butler, GSBCA 15478-RELO (Oct. 17, 2001); Terry M. Neeley, GSBCA 14930-RELO, 99-2 BCA ¶ 30,496; Joseph A. Curtis, GSBCA 13823-RELO, 97-1 BCA ¶ 28,935.

Although we agree with EPA that the agency acted unfairly in telling Ms. Jones it would pay costs for which the law precludes reimbursement, we do not believe that the circumstances are so egregious as to warrant recommending that GSA grant "meritorious claim" administrative relief to this employee.

STEPHEN M. DANIELS
Board Judge